

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 5, 2013

IN RE:

**PETITION OF LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY**

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**DOCKET NO.
12-00030**

**ORDER GRANTING LAUREL HILLS' REQUESTS FOR EXTENSION OF TIME TO
DIVEST AND TO STAY FURTHER ACTION PENDING APPEAL**

This matter came before Chairman James M. Allison, Director Kenneth C. Hill, and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at regularly scheduled Authority Conferences held on June 17, 2013 and September 9, 2013, to consider the requests of Laurel Hills Condominium Property Owners Association ("Laurel Hills") for an extension of time to divest the water system and a stay of these proceedings pending the final outcome of its appeal of the Authority's Order, issued on April 18, 2013, filed in the Middle Division of the Tennessee Court of Appeals.

On April 18, 2013, the Authority issued an *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* ("Order"), in which the panel ordered as follows:

1. The *First Amended Petition* filed by Laurel Hills Condominium Property Owners Association is denied.
2. Laurel Hills Condominium Property Owners Association shall divest itself of the water utility within 60 days, or no later than June 7, 2013.
3. Laurel Hills shall submit evidence of such divestiture to the Authority for its approval.

4. If Laurel Hills is unable to divest its water utility by no later than June 7, 2013, Laurel Hills shall file a notice with the Authority of its inability to divest itself of the water utility and shall appear before the Authority at the time and date which may be ordered by the Authority to explain its efforts to divest itself of the water utility.
5. Pending divestiture of its water utility, Laurel Hills remains a public utility and shall follow all applicable statutes, rules and procedures. Specifically, Laurel Hills shall furnish safe, adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so pursuant to Tenn. Code Ann. § 65-4-114.
6. To the extent allowable by the Proposed Agreed Order entered by the Chancery Court of Cumberland County, Laurel Hills shall bill and collect at the monthly interim rate of \$33.10 pending either divestiture of the water utility to a non-public utility or further action of this Authority.
7. The Show Cause proceeding opened as Docket No. 12-00077 will be held in abeyance until after the June 7, 2013 deadline for divestiture has passed. If Laurel Hills has not divested itself of the water utility by the deadline, the Hearing Officer and Investigative Staff shall resume proceedings against Laurel Hills for the violations set forth in the Show Cause Order issued by the Hearing Officer in this Docket and in Docket No. 12-00077 on July 17, 2012, and shall give notice to Laurel Hills of any additional violations before any additional counts are added to the Show Cause proceedings.
8. Authority Staff shall request the Comptroller of the Treasury, Office of State Assessed Properties, to appraise and value the property of the water utility pursuant to Tenn. Code Ann. § 65-4-117(2).
9. TRA Investigative Staff shall take whatever actions may be necessary against Laurel Hills in any Court to protect the customers of the water utility and to enforce this Order.

On April 22, 2013, the Chancery Court for the Thirteenth Judicial District of Cumberland County (“Chancery Court”), consistent with the *Order*, entered an order allowing Laurel Hills to impose a monthly rate of \$33.10 for water service to its customers. Further, on May 22, 2013, the TRA Staff sent a letter requesting that the Office of State Assessed Properties (“Office”) conduct an appraisal of the water utility’s property.¹

¹ See Letter to Barry Murphy, Office of State Assessed Properties, from Jean Stone and David Foster (May 10, 2013).

On June 7, 2013, in accordance with the Authority's *Order*, Laurel Hills filed its *Petitioner's Notice* ("Notice"), informing the Authority that it had not divested the water system. In its *Notice*, Laurel Hills requests an additional 60 days to divest the water system and further states that it has made a good faith effort to divest, including:

- (1) On May 8, 2013, extending an offer to sell the water system to Crab Orchard Utility District ("COUD"); COUD declined Laurel Hills' offer on May 16, 2013, and stated that "at this time [it] was not interested in purchasing either the water lines or tank."
- (2) Requesting that the Tennessee Association of Utility Districts publish notice that Laurel Hills is seeking to sell the water system; to-date Laurel Hills has received no response to its classified notice; and
- (3) Contacting Pluris² concerning its interest in purchasing the water system; regarding which the parties continue to discuss a possible sale.³

In addition, on June 14, 2013, Laurel Hills filed a petition for review of the Authority's *Order* with the Tennessee Court of Appeals, citing a variety of issues. The intervening parties to this docket, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") and certain customers of Laurel Hills (the "Customer Intervenors") have also challenged the *Order* as to the utility's recovery of attorney fees as part of the \$33.10 monthly interim rate fixed by the Authority.⁴ None of the parties have requested that the Tennessee Court of Appeals stay the Authority's proceedings pending the appeal, and no stay has been issued by the Court of Appeals.

² Laurel Hills did not provide any information about Pluris in its *Notice*.

³ *Petitioner's Notice*, pp. 1-2 (June 7, 2013).

⁴ The petition for review is pending in the Tennessee Court of Appeals in Nashville. See *In re: Laurel Hills Condominium Property Owners' Association v. Tennessee Regulatory Authority*, M2013-01392-COA-R12-CV.

June 17, 2013 Authority Conference

During the regularly scheduled Authority Conference held on June 17, 2013, the panel considered Laurel Hills' request for an extension of time in which to divest the water system. Based on the record, the panel found such request to be reasonable and voted unanimously to extend the deadline for divestment to August 16, 2013. In the event that Laurel Hills did not divest the water system by that date, the Authority ordered Laurel Hills to file notice and to appear before the Authority at a time and date to be determined by the Authority in order to further explain its efforts to divest the water utility. The panel also voted to hold the Show Cause Docket, 12-00077, in abeyance until August 16, 2013, or until further action of the Authority. Finally, the panel affirmed that all other findings, conclusions, and directives of its April 18, 2013 *Order* remain in effect.

Interim Action by Laurel Hills Requesting Stay of Proceedings

On August 20, 2013, upon an Agreed Order filed by Laurel Hills, the Chancery Court ordered a stay of its related proceedings in *Gary Haiser, et. al., v. Laurel Hills Condominiums POA, Inc.*, Case No. 18CH2-2012-CH-513, and *Tennessee Regulatory Authority v. Laurel Hills Condominiums POA, Inc.*, Case No. 18CH2-2012-CH-560, pending resolution of the appeal filed in the Tennessee Court of Appeals. Thereafter, on August 27, 2013, Laurel Hills filed a *Petitioner's Renewed Notice*, which states that it has not divested the water system, and given its appeal of the Authority's *Order*, requests that the Authority stay any additional action in this docket pending final outcome of the appeal process, or, at a minimum, provide an additional 60 days to divest the water system. No party filed an objection to the *Petitioner's Renewed Notice*.

September 9, 2013 Authority Conference

During the regularly scheduled Authority Conference held on September 9, 2013, the panel considered Laurel Hills' request to stay these proceedings pending the final outcome of its

appeal of the Authority's Order filed in the Court of Appeals, or an additional extension of time in which to divest the water system. Based on the record, the panel found that an additional 60-day extension of the deadline for divestment of the water system would not be adequate. Therefore, the panel voted unanimously to grant Laurel Hills' request to stay additional action in this docket pending the final outcome of the appeals process. In addition, the panel continued to hold TRA Docket No. 12-00077 in abeyance and reaffirmed that all other findings, conclusions, and directives of its April 18, 2013 *Order* remain in effect.

IT IS THEREFORE ORDERED THAT:

1. The *Petitioner's Notice*, filed on June 7, 2013, which requests an extension of the initial deadline set forth in the *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* issued in this matter on April 18, 2013, for divestment of the water system by Laurel Hills Condominium Property Owners Association to August 16, 2013, is granted;

2. In the event that Laurel Hills Condominium Property Owners Association does not divest the water system by August 16, 2013, it shall file with the Tennessee Regulatory Authority notice of such status and appear, at a time and date to be determined, to further explain its efforts to divest the water utility;

3. The *Petitioner's Renewed Notice*, filed on August 27, 2013, which requests a stay of these proceedings pending the final outcome of its appeal, filed in the Tennessee Court of Appeals, of the Authority's *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* issued on April 18, 2013, or, alternatively, an additional extension of time in which to divest the water system, is granted;

4. Further action in these proceedings are hereby stayed pending the final outcome of the petition for review of the *Order Denying Certificate of Public Convenience and Necessity*

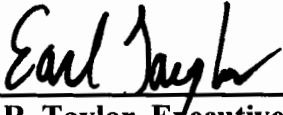
and Requiring Divestiture of Water System filed by Laurel Hills Condominium Property Owners Association in the Tennessee Court of Appeals;

5. Further action in the show cause proceedings in TRA Docket No. 12-00077 will continue to be held in abeyance pending the final outcome of the petition for review of the *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* filed by Laurel Hills Condominium Property Owners Association in the Tennessee Court of Appeals; and

6. Except as to the portion of the order that mandates Laurel Hills Condominium Property Owners Association divest the water system, all other findings, conclusions, and directives of the Tennessee Regulatory Authority in its *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* continue, and shall remain in effect.

Chairman James M. Allison, Director Kenneth C. Hill, and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director